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**VIA ECF**

The Honorable Laura Taylor Swain  
Chief United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, N.Y. 10007

Re: Nunez, et. al. v. City of New York, et. al., 11 CV 5845 (LTS)

Your Honor:

This letter is respectfully presented on behalf of defendants the City of New York (“City”) and the Department of Correction (“DOC” or “the Department”) to provide the Court with an update prior to tomorrow’s status conference.

**Background**

First, pursuant to the Court’s order, DOC Commissioner Louis Molina will be present at tomorrow’s status conference. Commissioner Molina is familiar with the Nunez litigation. In 2016-2017, he served as the first Chief Internal Monitor and Acting Assistant Commissioner of the Nunez Compliance unit at the Department. In that role, he raised the issue of changing facility leadership – an idea that he is now seeing to fruition by his suggestion to hire facility leadership externally. Subsequently, as First Deputy Commissioner, Commissioner Molina successfully worked with the DOJ to shepherd the Westchester County jails out of federal oversight. On January 1, 2022, Commissioner Molina assumed his current role.

Although there is undoubtedly much work to be done, in the four months since his appointment, the Department has made tremendous strides. Commissioner Molina has resumed external programming and family visits; introduced 17 credible messengers into the facilities; expanded dedicated educational housing for young adults; reduced triple shifts; and reduced unstaffed posts. Since Commissioner Molina increased staffing levels in January, to date, Use of Force incidents have declined 25 percent; across facilities assaults on staff associated with Use of Force Incidents have declined by 22 percent; and assault on staff without serious injury or use of force declined by 38 percent, as compared to the same time period in 2021.

Violence at Rikers' facilities has been an ongoing issue. To address it, Commissioner Molina resumed tactical search operations throughout the facilities and, since February 1, 2022, 20 operations were conducted facility-wide which resulted in the recovery of 2,297 contraband weapons. Specifically, at the Robert N. Davoren Complex ("RNDC"), 12 tactical search options were performed, in addition to rebalancing housing units to dismantle gang-affiliated housing, resulting in the recovery of 685 weapons between January 1 and April 20, 2022.

The Commissioner has also taken an aggressive approach to disciplining correctional officers. Since, January 1, 2022, the Commissioner has resolved numerous disciplinary cases. He has demoted a Warden for mismanagement. Additionally, he has "upwardly departed" in some cases by imposing more severe discipline than that recommended by Administrative Law Judges. In certain instances, he has also terminated employees.

Fixing the issues facing Rikers requires bold action and a City committed to change. The first four months of this Administration and Commissioner Molina's tenure reflect a new approach and a commitment to make the necessary and tough decisions required to institute needed change and move the DOC past this monitorship.

### **Recommendations and Implementation Proposal**

The City and Department generally accept the Monitor's recommendations. In addition, the Department generally accepts the Monitor's plan to implement the recommendations, subject to further discussion regarding the timelines. The City commits to providing an update, including more specificity and concrete plans, to the Court, the Monitoring Team and the parties within 30 days. As part of this implementation plan, the City and the Department commit to taking extraordinary and unprecedented measures, including recruiting personnel from outside the agency with correctional expertise in various areas, to accomplish systemic change.

The Commissioner and his team have worked closely with the Monitoring Team for the past few months. Commissioner Molina has engaged in numerous meetings with the Monitoring Team, by phone and in person, where he proactively flagged issues and engaged in substantive discussions about Department operations. For instance, as noted by the Monitoring Team in its status report, the Commissioner met with them to discuss the appointments of the Disciplinary Manager in the Trials Division (as required by the Third Remedial Order) and the Staffing Manager; the Monitoring Team's staffing analysis; and security concerns at RNDC. Following the issuance of the Monitor's Special Report in March 2022, the Commissioner participated in three meetings with the Monitoring Team covering several hours. The Commissioner was also present for the

all-parties meeting on April 21, 2022. Additionally, the Commissioner's legal staff and Nunez Compliance Unit staff are in daily communication with the Monitoring Team. The City and the Department have also participated in at least eight meetings, with the Monitoring Team and the parties, regarding the Monitor's recommendations. In short, the Commissioner has attended every meeting at which his attendance has been requested. In addition to meetings, he has remained in constant contact with the Monitoring Team and his team within DOC.<sup>1</sup> The City and the Department want to reaffirm their commitment to providing timely information – both in response to requests by the Monitoring Team, and proactively as issues arise that relate to the consent judgment and remedial orders. We commit to continuing to provide the Monitoring Team with direct access to Department staff at all levels. Further, the Commissioner has now reassigned the Assistant Commissioner of the Nunez Compliance Unit to report directly to him. This new reporting structure ensures that the Monitoring Team is timely apprised of all Nunez-related operational matters, and it demonstrates the importance that the Commissioner places on implementing the Monitor's recommendations.

### **The Department's Progress**

The Department has made progress in the areas of staffing, hiring, safety and security. Updates in this regard are provided below.

#### **Staffing**

The Department continues to feel the operational impact of the Covid-19 pandemic. An unprecedented number of staff are routinely unavailable due to sick leave and other forms of absences (i.e. FMLA, leave of absences, modifications, suspension and medically modified duty status).

The Commissioner is committed to appropriately disciplining those who abuse the sick leave policy. In terms of enforcement, although he is bound by NYS Civil Service Law section 75, which caps suspension without pay at 30 days, the Commissioner will utilize 30-day suspensions without pay, as much as his legal authority permits, while the disciplinary process proceeds. The Department will also seek expedited hearings, particularly in egregious cases where longer suspensions and termination may be warranted, as a disciplinary measure which complies with the relevant laws and union agreements.

The Department is also considering the following potential solutions:

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<sup>1</sup> On April 19, 2022, the Department of Justice ("DOJ") filed a letter (the "DOJ Letter") that was surprising in both its tone and substance based on DOC's communications with the Monitoring Team. On this particular issue, regarding the Commissioner's engagement with the Monitoring Team, the DOJ highlighted the Commissioner's absence from meetings on April 5 and April 14. However, the Monitor never requested the Commissioner's presence at those meetings. The Department was represented at those meetings by the Assistant Commissioner of the Nunez Compliance Unit and representatives of its legal division. The DOJ Letter not only inaccurately characterized the April 5 and April 14 meetings, but it failed to mention the hours upon hours that the Commissioner and his team have spent over the past four months engaging cooperatively with the Monitoring Team.

- increasing home confinement visits to ensure compliance;
- seeking termination or medical separation under the Civil Service Law for officers on long-term absence;
- denying more discretionary benefits to officers in chronic sick status;
- requiring more frequent examination by Department medical staff rather than personal physicians;
- and evaluating the Medical Monitored Restriction (“MMR”) policy.

Each of these solutions requires additional legal and operational review; the Department commits to providing the Court with an update as to each within 30 days.

In addition to enforcement, the Department is introducing two new technology initiatives to address the sick leave issue. The first initiative includes a partnership with the City’s Chief Technology Officer (“CTO”) to build an application to enable employee scanning at facilities (the project began in early 2022 and the Department is expecting to conduct a pilot of this initiative in the coming months). The second initiative involves procuring a scheduling software; the Department is in the final stages of evaluating vendors for this purpose. This software will allow the Department to integrate employee status data and fill posts in a timely and accurate manner. The two initiatives are designed to produce data reflective of scheduling aims and outcomes, which will enable the department to track all posts in near real time and optimize staffing. The Department believes this is fundamental to a transparent staffing model and the Department will be leveraging the scheduling application to also facilitate minimum standards and programming efforts by coordinating staffing more effectively as a direct result of these initiatives.

Further, reforming the Department’s sick leave policies is of significant importance. To ensure that these policies are appropriately revised, the Department’s First Deputy Commissioner Lynelle Maginley-Liddie is directly overseeing the initiative, which includes addressing the Department’s medical restriction policy and management of the Health Management Division (“HMD”).

In addition to addressing the recurring sick leave problem, the Department is undertaking a full review of its staffing policies to make the necessary changes that will lead to a more efficient and sustainable staff assignment process. This review includes, but is not limited to, consideration of the following:

- modifications to the post bid policy;
- civilianizing certain uniformed posts (including those in Central Timekeeping, HMD, and Data & Analytics);
- amending the awarding of posts process, including those staff who are currently awarded posts; and
- reviewing the process of assigning captains, including the appropriate ratio of officers to captains.

Commissioner Molina is also actively reviewing and resolving disciplinary cases. Thus far, he has resolved approximately 725 cases. Those 725 cases include 312 of the 400 Use of Force cases identified by the Monitor in the Third Remedial Order to be closed by the end of April 2022, and the Commissioner is on track to complete the outstanding 88 cases by the end of April 2022. Eleven of the resolved Use of Force cases resulted in terminations. The City will seek to expedite certain egregious cases before OATH to allow the Commissioner to make final determinations expeditiously.

#### External hiring

The Department has agreed to expand the candidate pool for facility leadership positions to include external candidates who are not part of the current uniformed ranks. The City and the Department have formulated a plan to discuss with the Monitor on April 25, 2022. The proposed plan navigates the restrictions imposed by New York State Correction Law Section 120 and New York City Administrative Code Section 9-117. While the new personnel will not directly manage matters of care, custody or control, their recommendations on these matters will be channeled through the Commissioner and with approval, will be implemented by the uniformed chain of command.

#### Safety and Security

The Commissioner provided a security plan for the RNDC facility to the Monitoring Team. That plan has been implemented. As outlined in the status report, the Department is having discussions with the Monitoring Team about how to implement and replicate the RNDC plan's success throughout the other facilities with the highest levels of violence. Between the RNDC action plan and other initiatives, the Department has recovered a total of 2,297 contraband weapons from persons in custody and in the facilities since January 2022.

The Department also plans to hire a Security Operations Manager and a Deputy Commissioner of Classification and Custody Management. The Security Operations Manager is scheduled to begin on or before May 15, 2022, and the Department is in the midst of the hiring process for the Deputy Commissioner of Classification and Custody Management. The Department has also accepted and is implementing all of the recommendations provided by Dr. James Austin's classification analysis.

#### Trials

The Department conducted a detailed analysis of the total number of attorneys and support staff needed to adequately conduct the work of the Trials Division pursuant to the Monitoring Team's recommendation. The conclusions of the analysis were provided to the Monitoring Team for their approval on April 22, 2022. The Department has also increased the salaries in the Trials Division to improve recruitment efforts and retention.

## **Conclusion**

In the last sentence of its letter to the Court, the DOJ threatens, for the first time, the idea of seeking the appointment of a receiver to “*implement sweeping reforms and to take all necessary actions to comply with the Consent Judgment and Remedial Orders and implement the Monitor Recommendations.*” (DOJ Letter at 5.) The extraordinary measure of ordering a receivership is not merited, and DOJ’s reference to it, less than four months into Commissioner Molina’s term, is unfair. As set forth above, since the beginning of this administration, the City and Department have taken tangible steps to stem the tide of violence and increase safety within the jails. The Commissioner has taken more far-reaching action than has previously been demonstrated. He has actively engaged with the Monitor on overcoming barriers and implementing recommendations to achieve sustainable reform practices and to address the systemic failures that bring us here today. The City and the Department are implementing bold reforms and are committed to taking the actions necessary to comply with the Consent Judgment, the Remedial Orders, and the Monitor’s Recommendations.

I thank the Court for its time and consideration of the City’s and the Department’s position.

Respectfully submitted,

*Kimberly Joyce /s/*

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